

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0105
SALES/USE TAX
For The Tax Periods: 1998, 1999**

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ISSUES

I. Use Tax – Best Information Available

Authority: IC 6-2.5-3-2, IC 6-8.1-5-4, IC 6-8.1-5-1.

The Taxpayer protests the Department's assessment of use tax based on incomplete records.

STATEMENT OF FACTS

Taxpayer was audited for the calendar years of 1998 and 1999 for sales and use tax. Taxpayer is primarily a retailer and provides service for two-way radio communications equipment. Taxpayer sells and leases two-way radio equipment and related accessories. Taxpayer also became a registered Indiana motor vehicle dealer in 1994. Taxpayer protests the assessment of use tax made based on a best information available basis. A fire occurred at one of Taxpayer's business in November 1999 where Taxpayer maintains business records were stored. More facts supplied as necessary.

I. Use Tax: Best Information Available

DISCUSSION

Audit assessed use tax on outside services based on cash disbursement records available and with estimates for missing months. The auditor notes that only one year of disbursements was provided. "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2.

Taxpayer claims that the business records were destroyed in a fire in November 1999 which occurred at one of the Taxpayer's other businesses. The auditor verified the occurrence of a fire.

IC 6-8.1-5-4 states

- (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer argues that the auditor was told at the outset of the lack of records and that the auditor made no attempt to examine check registers (all of which he claims were provided) and discuss these with the accountant. Taxpayer goes on to state that there was no statement by the auditor of what was taxable after the auditor reviewed the registers. Although Taxpayer concedes it is burdensome, they should have had an opportunity based on the circumstances to discuss the assessments and disbursement records with the auditor upon completion of the audit.

IC 6-8.1-5-1 states in part:

- (a) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department...

Also, "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made" *Id.* Under the circumstances, there is nothing to show that the auditor acted unreasonably. The auditor used the information that was available to him in an attempt to reconstruct the business activities in the periods assessed.

FINDING

Taxpayer's protest is denied.